

# Brand under attack: preventions, repercussions, defence strategies

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As more and more brands are being copied and pirated by brand pirates, experts warn businesses to be on the look-out for minor loopholes that may give pirates a space to attack their brands. This topic formed part of the discussion hosted today, Thursday, 26 May 2011, at the Michelangelo Hotel by the *Journal of Marketing* in association with Absa and Future Group.

"The fundamental strategy to prevent a brand from being attacked by brand pirates is to ensure that the product's trademark is fully registered, said Jenny Pienaar, Adams & Adams partner for trademark and litigation.

"People discover much later that they should have done something important about their brands; by then the damage has already been done," Pienaar pointed out.

## Case studies

Panellists debated several case studies, including [Bakers' Marie Blue Label](#) biscuit, which now has rivals such as Marie (by Spar), Marie (tea time favourite) and Marie biscuit prize. Another case study is Smarties (by Nestlé) versus Giggles (candy-coated chocolate drops). Giggles packaging looks similar to the Nestlé product.

"Bakers own the Blue Label Marie brand but unfortunately the term Marie has become generic, allowing several other manufacturers to make their own 'Marie' biscuit," brand consultant Geoff Whyte said.

"If you want to bring a new product to market, it's important to make sure you protect it first; it is much harder to take action later," Whyte warned.

~~"The historical biggest mistake made by Bakers is that it only registered the Blue Label name but not Marie, that is why its competitors launched a range of Marie products," brand consultant Geoff Whyte said.~~

~~"If you want to bring your product to the market, make sure that you protect it first; if you wait much later you will be in big trouble," Whyte warned. He said Bakers' Marie biscuit is under immense pressure, and that there is a possibility that it has given some of its market share to its competitors as a result of this piracy.~~

Nine out of 10 consumers interviewed by Bizcommunity.com around Sandton said they did not spot any difference between all the Marie biscuits, saying they all look the same and that they would buy the cheapest one.

## Launch a massive counter-attack

When things heat up, the original brand that suffered losses of market share and economic damage can launch a massive counter-attack, panellists said.

Jeremy Sampson, executive chairman of Interbrand Sampson, said one could argue and claim loss of share by backing it up with evidence such as Nielsen figures. "Yes, the damage is very clear and your business is being threatened. If it is a small operator, he or she will capitulate, but if it is a big guy, it can sometimes get nasty," he said.

Whyte said while the legal situation in South Africa gives the claimant several options, it gets much more difficult in the rest of Africa.

The brand is the lifeblood of your business and when pirates erode its reputation, you need to defend it forcefully, urged Pienaar, warning however that there is no quick remedy in SA unlike in the developed world.

## Identify your rights first

Nevertheless, she said the first thing is to identify what your rights are before seeking justice, reiterating that every registered trademark, including containers and packaging, must be represented graphically to avoid piracy.

Pienaar also said seeking justice depends on the nature of infringements. "Is it a trademark infringement, a passing-off or an advertising goodwill infringement?" she asked, adding that all forms of infringements are damaging to the brand.

"What do you do? You can send a letter of demand to the pirates and if your letter is ignored, sue them to get a capitulation."

Zayd Abrahams, Coca-Cola SA head of sparkling beverages, said if it happens, a brand must not wait for litigation but should continuously improve the quality of its product. "That is the basic thing a marketer can do. After all, the choice is for the consumer to make."

## Should not be too restrictive

Noah Greenhill, senior GM at the JSE (marketing and business), said he has seen 'real fake' products in China, including Louis Vuitton, whose representatives would not be able to tell whether it is fake. However, he urged caution when dealing with pirated brands, saying people should not be too restrictive to try to stop brands to compete each other, saying this could hamper the development of entrepreneurship.

## For more:

- LG Baumann: [A short history of the biscuit industry in South Africa: from beginnings to 1984](#)

*Quotation by Geoff Whyte corrected at 4.53pm on 27 May 2011.*

## ABOUT ISSA SIKITI DA SILVA

Issa Sikiti da Silva is a winner of the 2010 SADC Media Awards (print category). He freelances for various media outlets, local and foreign, and has travelled extensively across Africa. His work has been published both in French and English. He used to contribute to Bizcommunity.com as a senior news writer.

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